As regards the charge of illegal gratification, the learned District Judge stated that he was satisfied that the two Police witnesses were truthful and reliable witnesses, and it is evident that he had given close consideration to the criticisms of such evidence by Mr. Walters, which criticisms were repeated before me. In effect Mr. Walters submitted that there was no offer of a bribe but that $500 had been produced by the accused at the instigation of the Corporal. It is quite clear that the money was produced by the appellant and offered as 'coffee money' by way of a bribe to avoid the consequences of being caught red handed with a considerable quantity of opium in his possession and such possession was not and could not be disputed. I uphold the conviction on this count also.

The learned District Judge passed a sentence on the first charge of 6 months r.i. and on the 2nd charge of 3 months r.i. to run concurrently with the 6 months, as the 2nd offence arose out of the first. In effect this is no punishment at all for the 2nd offence, an offence which is said to be very common and one for which it is very difficult to secure a conviction. I think that the 2nd sentence should at least have been made to run consecutively to the first sentence of 6 months r.i., and I so order. Even so I consider that the accused has been leniently dealt with.

*Order accordingly.*

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## YAP YEOK v. PUBLIC PROSECUTOR.

[A. Cr. J. (Laville J.) September 14, 1948]

[Johore Bahru — Criminal Appeal No. 13 of 1948]

*Criminal Procedure — Prosecution witness offered for cross-examination — Interrogation of witness by District Judge before cross-examination — Opium and Chandu Proclamation s. 3(1).*

This was an appeal against the conviction of the appellant for possession of chandu. One of the grounds of appeal was that when a prosecution witness was offered for cross-examination at the trial, he was interrogated by the learned District Judge before the defence cross-examined him.

**Held:** (1) while it is more correct, when a prosecution witness is offered for cross-examination, for the trial Judge to postpone his interrogation till after the cross-examination and re-examination, if any, of such a witness it is always open to a trial Judge to question any witness in the interests of justice; (2) on the facts of the case, the procedure followed by the trial Judge did not in any way harm the accused s case or embarrass him.

MAGISTRATE'S CRIMINAL APPEAL.

*M. Ismail* for the appellant.

*W. M. McCall* (D. P. P.) for the respondent.

**Laville J.** : —Yap Yeok of Johore Bahru was charged before the District Judge, South Johore, with being in possession of a certain amount of chandu in a hut behind Jalan Trus about midnight on 29th May, 1948, and convicted on 10th July, 1948, of an offence under section 3(1) of the Opium and Chandu Proclamation No. 49.

The prosecution evidence was that of the Asst. Superintendent of Customs (Preventive Branch), Mohamed Sam bin Haji Abdul Rahim, and two O.D.O.s. A third O.D.O., Lim Pah Bah, was offered for cross-examination by the defence. The evidence of all these officers who were present when the hut was entered was that the accused was found therein in close juxtaposition to the chandu and the means of smoking it; that he said on being questioned that the hut was his, rented from a Malay. The O.D.O. offered for cross-examination gave evidence that accused on being taken away produced a lock and locked the door of the hut. Two other persons were in the hut and were searched, but nothing incriminating was found on them and they were allowed to go and were not called as witnesses.

The defence was that the accused lived not in the hut but at 22, Jalan Jin Quee; he produced rent receipts for rent paid for 22, Jalan Jin Quee, and called a witness who had visited him there prior to 29th May, 1948 and subsequently also. He denied ownership of the chandu and smoking materials found in the hut and said he had gone there to look for a friend and had been invited in by the other two men found there.

The learned District Judge believed the evidence of the prosecution and under the provisions of section 3(2) of the Proclamation presumed that accused was in possession of the chandu and smoking implements found and that he had not discharged the onus cast on him of disproving possession. He accordingly convicted accused and, as he had no previous convictions, sentenced him to 6 weeks simple imprisonment.

The first ground of appeal taken by accused is that the evidence of the Asst. Superintendent of Customs (P.B.) and the O.D.O.s was not to be believed because their incrimination of accused seemed to be an after thought when the other two persons escaped. There is no merit in this ground. Their evidence is that accused admitted ownership of the hut and that the other two inmates were not near the chandu or smoking implements and did not escape, but were allowed to go as nothing was found on them. There are no grounds whatever to suspect the genuineness of this evidence.

The second ground too must fail, namely that the other two inmates of the hut were not called by the prosecution; there was no reason why the prosecution should call these men as there was ample evidence

already from the point of view of the prosecution as to ownership.

The third ground of appeal was that when O.D.O., Lim Pah Bah, was offered for cross-examination he was interrogated by the learned District Judge before the defence cross-examined, and that it was this interrogation which brought out the evidence as to the accused locking up the hut, evidence which admittedly was of weight in the consideration of the case by the learned District Judge.

While I lean to the opinion that it would have been more correct for the trial Judge to postpone his interrogation till after the cross-examination and re-examination, if any, of such a witness, it is open to the trial Judge to question any witness in the interests of justice, and it is clear from the statement made by the accused to the Asst. Superintendent of Customs (P.B.) on 29th May, 1948 and recorded by him and put in evidence as P.9 that accused then admitted that he had the key of the hut. I therefore hold that the procedure followed by the trial Judge did not in any way harm the accused's case or embarrass him.

As to the contention that the analyst's certificate was inadmissible in evidence as not having been proved, I have already ruled in a previous case that a certificate of this nature (P.8.) is admissible in evidence.

The learned District Judge held rightly that the prosecution evidence threw the onus of proving dispossession of the chandu and smoking implements on the accused and it is clear that the accused made no attempt to discharge that onus.

For these reasons the appeal is dismissed and the conviction and sentence must stand.

*Appeal dismissed.*

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## SELVADURAI v. PUBLIC PROSECUTOR

[A. Cr. J. (Callow J.) September 17, 1948]

[Seremban — Criminal Appeal No. 10 of 1948]

*Evidence Ordinance, s. 24 — Confession — Inducement — Admissibility or rejection.*

In this case the appellant was convicted for forgery. On appeal it was argued that the confession by the appellant, which was admitted at the trial, should not have been received in evidence because it was obtained by inducement.

**Held:** (1) although at the time he made the inculpatory statement the appellant had not been accused, it is sufficient to cause the operation of s. 24 of the Evidence Ordinance if the ultimate outcome is a charge based upon the inculpatory statement; (2) very slight inducement is sufficient to render a statement inadmissible; (3) when it is proposed to tender a confession it should not be proffered at the opening of the case as a preliminary issue, but a foundation should first be laid.

*Cases referred to :—*

(1) *R. v. Cowell* 27 Cr. App. R. 191.
(2) *Emperor v. Cunna* A.I.R. 1920 Bom. 273.
(3) *R. v. Garner* 2 C. & K. 925.
(4) *R. v. Manfield* 14 Cox C.C. 640.
(5) *R. v. Thomas* 7 C. & P. 345.
(6) *R. v. Reason* 12 Cox C.C. 228.
(7) *R. v. Hammond* 28 Cr. App. R. 84.

MAGISTRATE'S CRIMINAL APPEAL.

*R. S. Rajasooria* for the appellant.

*D. W. Good* (D. P. P.) for the respondent.

**Callow J.** : — This is an appeal from the Court of the District Judge, Negri Sembilan, sitting at Port Dickson, against the conviction and sentence of three months rigorous imprisonment imposed on the 29th of June, 1948, for forgery.

The grounds of appeal, apart from (c) which concerns weight of evidence and was not mentioned in argument, and (d) against sentence, consist of the submission that the admission or confession by the appellant that he signed the document Ex. P. 5 should not have been received in evidence because it was obtained by inducement, threat or promise.

The facts are that on the 20th of March, 1948, a meeting was held in the office of the 1st prosecution witness (Mr. C. H. O. Strettell who is the Manager of the Jimah Estate) at which were present a number of persons including the accused. The meeting resulted from a petition by certain employees alleging under payment.

During the meeting it transpired that the receipt P. 5 purported to have been signed by the 4th prosecution witness (Singaram) was not signed by him nor had he received the money stated therein. The case for the prosecution is that the appellant signed and thereby forged Ex. P. 5.

The record on this point taken from the evidence of the 1st prosecution witness Mr. Strettell reads :—

I said to Singaram 'Did you sign this receipt'. The answer was 'I can neither read nor write'. I asked accused 'Did you hear that'. He said 'Yes'. I said 'Who signed it'. He said 'I did'. On the question of this receipt before I said 'Who signed it' I did not say anything else in the nature of a threat.

Then in cross-examination and re-examination of the same witness (1 P.W.) there come these further passages :—

**Cross-examination**:— In the course of the meeting there were a number of allegations brought against the accused. It may be said I was holding an enquiry. I think at the beginning of the enquiry I told him to tell the truth. I was anxious to get to the bottom of this and I wished to find out if allegations made against accused were well founded or not. For that reason I